

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

NICOLE MARSHALL,

Plaintiff,

vs.

DILLARD'S INC. f/k/a DILLARD'S  
DEPARTMENT STORES, INC.,  
Defendant.

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Case No. 4:05cv2239MLM

**ORDER**

This matter is before the court on plaintiff's Motion to Dismiss Without Prejudice Counts IV, V, VI, VII, and VIII of plaintiff's Petition that was originally filed in the Circuit Court of St. Louis County [Doc. 4] and plaintiff's Motion to Remand [Doc. 9] Defendant has filed a Response to the Motions. [Doc. 11]

On October 31, 2005 plaintiff filed a Petition against Dillard's, Inc. in the Circuit Court of St. Louis County, Missouri. Among the eight Counts in her Petition, plaintiff alleged two separate violations of the Federal Americans with Disabilities Act ("ADA") (Counts IV and V). Based upon her claims under federal law, on November 29, 2005, Dillard's removed the case to this court based on federal question jurisdiction. On November 30, 2005 Dillard's filed its Answer to plaintiff's Petition. On December 1, 2005 plaintiff filed the instant Motions to Dismiss and to Remand in which she seeks to dismiss without prejudice all but Counts I, II and III of her Petition including her federal claims under the ADA. With the proposed dismissal of the federal claims, plaintiff seeks remand of the remaining three state common law causes of action.

Dillard's does not generally oppose plaintiff's request to dismiss Counts IV through VIII of her Petition. Dillard's however opposes dismissal of these claims without prejudice.

The parties have conferred and have reached a proposed stipulation of dismissal. Under the proposal Dillard's would be willing to stipulate to the dismissal of Counts IV through VIII and would stipulate to the remand of the case to the Circuit Court of St. Louis County, Missouri if the dismissal of Counts IV through VIII is a dismissal with prejudice. Because the parties have come to an agreement over the nature of the dismissal and because there are no longer federal claims giving jurisdiction to this court,

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's Motion to Dismiss is **GRANTED** in part and **DENIED** in part in that the Motion to Dismiss Counts IV, V, VI, VII and VIII of plaintiff's Petition are dismissed with prejudice. [Doc. 4]

**IT IS FURTHER ORDERED** that a stipulation for dismissal is filed contemporaneously herewith.

**IT IS FURTHER ORDERED** that plaintiff's Motion to Remand is **GRANTED**.  
[Doc. 9]

**IT IS FURTHER ORDERED** that the Clerk of the Court shall take all appropriate administrative action to remand this case to the Circuit Court of St. Louis County, Missouri.

/s/Mary Ann L. Medler  
MARY ANN L. MEDLER  
UNITED STATES MAGISTRATE JUDGE

Dated this 16th day of December, 2005.

